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man. That an inherited syphilitic infection has its distinct deleterious effects upon the physical and mental development of the child so affected cannot be doubted but there still exists considerable uncertainty as to the exact nature of the mental defects of hereditary luetics. In the author's experience these youngsters rarely show a mere intelligence defect *per se*. They are rather characterized by an arrested development of their emotional and volitional faculties, the very same defect which in most instances characterizes the grown-up criminal. It is hoped that this paper will stimulate those who have the care of the delinquent youth in hand to utilize to a greater extent than has been the case heretofore in this country, this valuable adjunct—the Wassermann reaction. It not only gives us an indication as to the probable cause of juvenile delinquency but may prove of inestimable value from a therapeutic standpoint.

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DIE BEGRIFFE STRAFE UND SCHAUDENSERSATZ. *By Giulio Q. Battaglini.* Translated by *Franz Wallan* of Bonn, for the *Archiv für Recht und Wirtschaftsphilosophie*, April, 1911.

This is an interesting dissertation on the concepts of punishment and compensatory damages. The author claims that the two concepts should be kept distinct. Herein we agree with him; our only wonder is that Battaglini should so painstakingly distinguish them, denying at length their interchangeability. But, while we may not see the direct practical value in his research, we heartily endorse and favor theoretical works of this kind, for, by them the errors in proposed renovations and much heralded returns to some Golden Age are made apparent. A thorough theoretical knowledge is the best foundation for practical work. Its lack has led to many deplorable practical blunders in our country and the present political endorsement of the rule of thumb makes a theoretical study of the philosophical, and sociological basis of juridical problems of great educational value.

Battaglini begins his essay by stating that punishment and damages are penalties imposed by law for the infraction of a primary legal duty—the former, criminal; the latter, civil. The distinction of the last phrase, however, is only formal. And, furthermore, the old distinction carried on the kind of interest, protected whether public or private, cannot be considered lucid, for every statute protects interests of both kinds. The statute protecting the right of suffrage protects a private right, while one protecting property is in the interest of all, as well as of him who owns the particular object protected. There can be no accurate division by this test. And yet, Battaglini will not have the two concepts confused. He opposes Merkel and Heinze for holding that damages are a kind of punishment. To show the difference he writes that a punishment is not reparative, it does not cure the harm done the victim by the crime, whereas damages are compensatory, and as far as possible restore things to *Status quo*—another proof, as he thinks, that damages are not a punishment, is the fact that many acts entail both consequences

REVIEWS AND CRITICISMS

and subject their author to prosecution and civil suit. Here, we might adduce an argument for the Common Law lawyers in the existence of "primitive damages" distinct from ordinary damages. He refines his point further, and explains that the remission of punishment granted by the German code for immediate indemnification does not prove the indemnity of punishment and damages, but only the individualistic tendency of the German legislators. He favors the Italian point of view, that indemnification is to be considered in extenuation.

He then discusses the case of those under disabilities, and weak-minded persons. On the subject of these, he thinks that while the imposition of damages is just, the infliction of punishment is unjust, when the subjective phases of criminality are lacking. He is not a positivist, and while recognizing the necessity of punishment as a result of crime, i. e., an act of offense by the state against the author of a breach of a legal duty, he does not believe in the infliction of a punishment when the psychology of the delinquent prevents his realization of his act. He believes that the imposition of damages, i. e., of a defensive act by the state is always just.

Before taking up the last pages of his treatise, dealing with the crimes of corporation, we may summarize his thought as follows: A crime, or breach of a legal duty, must give rise to two reactions, which while similar and originating in the same act or omission, are distinct. The one is the punishment, a reaction by the state in the interest of society with the intent to cause "pain" (*absolute Uebel*) to the delinquent who has done harm to the social scheme. It is an act of offense against an enemy of society. This punishment must, however, be based on the subjective attitude of the delinquent. This was recognized to a certain extent by the old Common Law, when it required an *animus*. And, the punishment, notwithstanding its recognition of the subjective element of crime, remains always an act of offense, not simply defensive. This quality is necessary in order that it exercise its deterrent and reformative functions, which are of more general importance than its prevention. The other consequence or reaction following a criminal act or omission is the right of the victim to damages, i. e., to compensation for the injury. In this the state has only an indirect interest, similar to its interest in the maintenances of property. Now there are many differences between these consequences which can be seen from the summary. The punishment, for example, is personal *actio personalie cum persona moritur*, the damages follow the estate, and are accessible when there is no "animus." The confusion of these concepts has been largely due to the teachings of a modern school, which holds that punishment is not an act of offense, but merely repressive, deterrent, and reformative.

With this summary of his thought, we will leave the main current of Battaglini's argument, and following his example in *Die Begriffe Strafe und Schaudensersatz*, take up the application of his theory to corporations. This application is of interest both in showing the truth of his distinction, and in giving a philosophically sound plan of attack upon corporations which are guilty of crimes, whether of a

financial nature, such as monopolies and extortion, or of an industrial nature, including violations of statutes requiring protective machinery and of statutes limiting hours of employment (whose justice is not in question). To return, however, to Battaglini's application of his concepts of punishment and compensatory damages to corporations, or collective persons, "human associations or organizations for effecting a purpose, which in legal phraseology, make new juridical units of phenomenal form," with abstract synthetic unity and concrete changeable plurality. As the unit is composed of men, it must be subject to law. And, of course, an entity cannot enter the realm of law, that is, be juridical without being governed by all kinds of law applicable to the deeds it effects and the circumstances and conditions in which it has its being. It cannot be subject to criminal law. But, the non-corporal or abstract of the corporation renders it possible of subjection to criminal law only in its abstract or prohibitory phases. In other words, a corporation is not punishable. Here he deals philosophically with a practical question of the greatest importance. We may object, be inclined to disagree with him, but after a little reflection, I am afraid that we must see that the criminal prosecution of trusts is unphilosophical and, therefore, unjust and doomed to result in injustice. He believes in the criminal liability of managers and directors, believes in corporations being liable in damages for harm done, but he does not see how a corporation, the abstract unit, can be imprisoned or fined. The first of his impossibilities, is, of course, apparent to all. The second should be equally clear for the corporation itself does not pay the fine, but the investors who lack the *animus*, which we submit cannot be implied by the investment, in the majority of cases. This seems like a refinement of the old theory of the "legal entity" and *fiction juris*, and would seem to lead us into fields of academic sophistry, but such is far from being the case. For to follow the path leading to practical questions, we may point out that if the investors pay the price of the corporation, it means that innocent men are being punished, that is, men who have entrusted their money to responsible men, for unless the idea of accessories is established beyond all bounds, they are innocent. So, enforced dissolution does not affect the entity or the punishable direct, but the investors. And thus Battaglini turns his theory of the concepts of punishment and damages to the solution of a problem of the first magnitude, and following a decided plan—the criminal liability of directors, the non-punishability of corporations—he would effectively curb criminal monopoly, as well as do away with the violation of industrial statutes without mulcting the innocent petty stockholders, and without subjecting investment to the damaging possibility of prosecution.

As we wrote at the beginning of this review, we agree with Battaglini in his distinctions of the two concepts and while we wonder at the detail of his differentiation, we can but applaud the spirit and execution of philosopho-juridical works of this kind and express the hope that the philosophy of law will find in America many illustrious followers.

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